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Issue 01-1 Spring/Summer 2001

The Reporter is published by the Massachusetts Department of Public Health, Division of Food and Drugs, Food Protection Program and the Division of Community Sanitation. For further information on these and other topics, Food Protection Program staff may be reached by calling 617-983-6712 and Division of Community Sanitation staff may be reached by calling 617-983-6762.

This publication is sent to all Boards of Health in the Commonwealth. It is requested that a copy be circulated to all board members and interested employees. Other interested individuals and agencies may request a copy by contacting the Editor.

Please address all correspondence to: Joan L. Gancarski, Editor; The Reporter; Division of Food and Drugs; Massachusetts Department of Public Health; 305 South Street; Jamaica Plain, MA 02130, Telephone: 617-983-6764, e-mail: joan.gancarski@state.ma.us, or FAX: 617-983-6770 ❖

Letter from the Directors:

Paul J. Tierney, Division of Food and Drugs, Food Protection Program
Howard S. Wensley, M.S., C.H.O., Division of Community Sanitation

The Attorney General Thomas J. Reilly recently rendered an opinion that the State Sanitary Code does not apply to, and that local boards of health have no jurisdiction on, *facilities owned and operated* by the Commonwealth. The Attorney General's reasoning, supported by case law, is that the statute mandating the State Sanitary Code (Massachusetts General Law, Chapter 111, Section 127A) does not expressly include state owned/operated facilities.

It is the opinion of the Massachusetts Department of Public Health (MDPH), however, that the Sanitary Code and the authority of the Boards of Health do apply in instances where the activity may be on state property, but is operated by a non-state entity. (A copy of the opinion and Departmental interpretation begins on page 5.)

On page 17 of the **Reporter** is another opinion rendered from the Office of the Commonwealth's Attorney General Office this Spring. This opinion focuses on community zoning by-laws restricting body art to adult-entertainment districts.

This edition also contains articles about food safety issues recently in the media: Foot and Mouth disease, BSE (Bovine Spongiform Encephalopathy), and the FDA shell eggs safe handling labels and regulations. In addition, there are two articles concerning guidelines and policies within the Food Protection Program (Catered Meals to Off-site Feeding Locations, page 26 and Guidelines for Evaluating Food Products for Salvage and Reconditioning, page 27). During Winter 2001, two brochures were developed, written, and printed by the Food Protection Program (FPP): one concerned with Residential Kitchen and the other about Shellfish Harvesting. Copies of each are included in this edition.

Both the FPP and the Division of Community Sanitation (DCS) have been actively involved in writing and revising public health regulations.

- The FPP conducted three public hearings for the newly proposed Fish and Fisheries Products regulation, updating 105 CMR 533.000. Comments from the hearings were incorporated into the regulation, and the new document was forwarded for approval to the Public Health Council.
  The major change in the regulation is the addition of the adoption of federal HACCP regulations and Good Manufacturing Practices for shellfish, in alignment with the National Shellfish Sanitation Program (NSSP) Model Ordnance. Additional changes included the delineating of who, what, where and how to obtain an annual retail dealer, wholesale truck, and wholesale dealer permit. as well as an extensive section outlining the enforcement process to be undertaken by the Division of Food and Drugs.

- In conjunction with regulation reform, legislation was submitted to the state legislature by the MDPH to transfer from local Boards to the Massachusetts Division of Food and Drugs licensing and permitting authority for wholesale bottled water processing, dairy plant facilities, and frozen dessert operations.
- After the passage of the Beach Bill, the House and Senate have included funding to assist local Boards of Health in the implementation of the new regulations, such as providing funding to LBOHs for the costs of weekly laboratory analyses of bathing beach water. The DCS is closely monitoring this initiative as it now is in conference committee.
- Indicator organisms for use in water quality standards for bathing beach water analyses have been finalized.
  See <https://www.state.ma.us/dph/dcs/bohbeach.pdf>
- Since Fall 2000, the DPH, recreational camp staff, and local boards of health have worked together to develop a system ensuring that camp operators obtain licenses in a timely manner, and that regulations are uniformly enforced by boards of health
- In conjunction with the MDPH Division of Communicable Disease, the FPP was awarded a U.S. Centers for Disease Control and Prevention (CDC) grant to improve the ability of local boards of health to conduct foodborne illness surveillance. A component of the grant includes the creation of guidelines as well as the development and presentation of training for foodborne illness investigations.

In Spring 2001, Paul J. Tierney was appointed the Director of the FPP. Since 1978, Paul has served the MDPH in a variety of capacities, including 15 years in Substance Abuse Services and the last eight years in the Division of Food and Drugs as Coordinator of the Medical Administration Program and Assistant Director of the FPP.

Also in Spring 2001, John F. Farrell, Supervisory Inspector of the Food Processing Unit of the FPP retired after 31 years of devoted service to the Division of Food and Drugs. John's years of experience, both "in the field" and as a supervisor are greatly missed. Daniel McPartlin, who has been a Senior Food and Drugs Inspector in the Food Processing Unit, was appointed Supervisory Inspector of the Food Processing Unit

Michael Wall, Senior Food and Drug Inspector transferred to the Dairy Plant Inspection Unit.

Both Jennifer Murphy, Assistant Director of DCS and Dr. Erica Berl, Public Health Veterinarian of FPP were awarded their Masters in Public Health by Boston University.⁂

Regulation of State Facilities Under the State Sanitary Code

The Attorney General Thomas J. Reilly recently opined that the State Sanitary Code does not apply, and that local boards of health have no jurisdiction on facilities *owned and operated* by the Commonwealth. His reasoning, supported up by case law, is that the statute mandating the Sanitary Code (Massachusetts General Law, Chapter 111, Section 127A) does not expressly include state owned/operated facilities.

It is the opinion of the Department of Public Health, however, that the Sanitary Code and the authority of the Boards of Health does apply in instances where the activity may be on state property, but is operated by a non-state entity.

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

JANE SWIFT
GOVERNOR

WILLIAM D. O'LEARY
SECRETARY

HOWARD K. KOH MD, MPH
COMMISSIONER

TO: Local Boards of Health
Code Enforcement Agencies

FR: Nancy Ridley, M.S.
Assistant Commissioner
Bureau of Health Quality Management

RE: Regulation of State Facilities Under the State Sanitary Code

DATE: June 11, 2001

In response to a request from the Department of Public Health concerning the authority of local Boards of Health to enforce the state sanitary code against state owned facilities, the Office of the Attorney General recently issued an opinion. While the opinion focused primarily on facilities at the University of Massachusetts, it concluded that the Commonwealth and its agencies are exempt from the State Sanitary Code and that local Boards of Health do not possess enforcement authority over state facilities. (A copy of the opinion is enclosed). The language of the opinion is broad enough to also conclude that the Department has no authority to enforce the Sanitary Code against the Commonwealth and its agencies.

We have concluded from the opinion, however that programs operated by private vendors or private programs leasing space from the Commonwealth are obligated to comply with the State Sanitary Code and local boards of health retain the authority to enforce against such vendors or programs. The following are questions and answers relative to specific situations:

Q. Must a food service facility at a state park that is operated by a private vendor comply with the Sanitary Code and have a permit from the local Board of Health?

A. Yes

Q. Must the food service facilities at a state college, operated by employees of the college comply with the Sanitary Code and have a permit from the local Board of Health?

A. No, neither compliance nor a permit is required.

Q. If a third party leases space on the campus of a state college to operate a camp and utilizes its food service and swimming pool, must the camp, the pool and the food service be inspected and licensed by the Board of Health?

A. In this case, the camp must be inspected and licensed by the Board of Health. The camp regulations require that any associated swimming pool and food service facilities must also have (105 CMR 430.430 and 105 CMR 430.320) a permit from the local board of health. If the state facility refuses to obtain these required permits, the camp may not operate at that site.

Q. Are beaches operated by state agencies required to meet the requirements of 105 CMR 445.000?

A. Yes. The statute (MGL, C.111, s.5S) specifically states that the regulations shall apply to state beaches. The statute also places the responsibility for monitoring the state beaches with the Department of Public Health, not the Boards of Health.

We sincerely hope that the local Boards of Health will work with those state agencies that wish to voluntarily comply with the State Sanitary Code. It is the intention of the Department to also provide consultation and assistance to those state agencies that request assistance, especially in the area of swimming pools, recreational camps for children and family-type campgrounds.

If you have any questions regarding voluntary compliance please contact Howard Wensley at (617) 983- 6761; Mike Feeney at (617) 624-5757 (regarding indoor air quality); or Paul Hunter at (617) 284-8417 (regarding lead paint). Please refer any legal questions to Tracy Miller or James Ballin at the Department's Office of the General Counsel at (617) 624-5220.

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

JANE SWIFT
GOVERNOR

WILLIAM D. O'LEARY
SECRETARY

HOWARD K. KOH, MD, MPH
COMMISSIONER

MEMORANDUM

TO: Executive Offices
State Authorities

FROM: Howard K. Koh, M.D., MPH
Commissioner of Public Health

RE: Regulation of State Facilities Under the State Sanitary Code

DATE: June 7, 2001

As you may know, the Department of Public Health ("Department") is authorized, by G.L. c. 111, § 127A, to promulgate the State Sanitary Code which contains standards for certain activities (such as residential housing, including lead paint; swimming pools; recreational camps for children; food establishments; bathing beaches; family type camp grounds; and indoor skating rinks). Primary enforcement authority is placed with local boards of health.

In response to a request from the Department concerning the authority of local boards of health to enforce the State Sanitary Code against state owned facilities, the Office of the Attorney General recently issued an opinion. While the opinion focused primarily on facilities at the University of Massachusetts, it concluded that the Commonwealth and its agencies are exempt from the State Sanitary Code and that local boards of health do not possess enforcement authority over state facilities. (A copy of the opinion is attached). The language of the opinion is broad enough to also conclude that the Department also has no authority to enforce the Sanitary Code against the Commonwealth and its agencies. We also conclude from the opinion that programs operated by private vendors or private programs leasing space from the Commonwealth *are* obligated to comply with the State Sanitary Code and local boards of health retain the authority to enforce against such vendors or programs.

As the opinion points out, there is nothing to prevent officials in charge of state facilities from voluntarily complying with the provisions of the Sanitary Code. In the past, the Department and local boards of health have worked cooperatively with many state agencies to achieve compliance with sanitary code standards at state facilities. In light of the Attorney General's Opinion, I want to urge all state agencies to voluntarily comply with applicable sanitary code standards at their facilities in order to ensure protection of the public health. Department staff, including Howard Wensley, Director of the Division of Community Sanitation, is available to meet with and work with state agency officials on this important issue. If you have any questions regarding voluntary compliance please contact Howard Wensley at (617) 983- 6761; Mike Feeney at (617) 624-5757 (regarding indoor air quality); or Paul Hunter at (617) 284-8417 (regarding lead paint). Please refer any legal questions to Tracy Miller or James Ballin at the Department's Office of the General Counsel at (617) 624-5220.

Please distribute this memorandum to your constituent agencies and facilities.

Enclosure

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108-1698

TOM REILLY
ATTORNEY GENERAL

(617) 727-2200

No. 00/01-2

April 25, 2001

Howard W. Koh, MD, MPH
Commissioner
Department of Public Health
250 Washington Street
Boston, MA 02108-4619

Dear Commissioner Koh:

You have requested an opinion on whether local boards of health have jurisdiction to enforce the provisions of the State Sanitary Code against state-owned facilities, indicating that your request was prompted by local boards' efforts to inspect swimming pools located at facilities of the University of Massachusetts. Consistent with the conclusions reached in a long line of Attorney General opinions, including one issued to the Secretary of Public Safety on October 30, 2000, I conclude that the Commonwealth and its agencies are exempt from G.L. c. 111, § 127A, the statute authorizing the Department of Public Health to promulgate the Sanitary Code, and that local boards of health do not possess enforcement authority over property owned by the University of Massachusetts with respect to the provisions of the Sanitary Code. I recognize, of course, the importance of ensuring that facilities owned by the Commonwealth or its agencies are maintained in a manner that protects the health and well-being of the public. Nothing in my conclusion would prevent the officials in control of such facilities from

voluntarily complying with the provisions of the Sanitary Code. In addition, given that my conclusion is based upon the language of the relevant statute, you may wish to consider whether to propose legislation expressly making the Sanitary Code applicable to such facilities.

In reviewing G.L. c. 75, the enabling statute for the University of Massachusetts, the Supreme Judicial Court has concluded that the University is "an agency of the Commonwealth." McNamara v. Honeyman, 406 Mass. 43, 47 (1989); see also Robinson v. Commonwealth, 32 Mass. App. Ct. 6, 9 (1992).[1] The University's enabling statute provides that the University's Board of Trustees, in exercising its statutory authority, "shall not in the management of the affairs of the university be subject to, or superseded by, any other state agency, board, bureau, commission, department or officer," with certain exceptions not relevant hereto. G.L. c. 75, § 1; see 1972/73 Op. Att'y Gen. No. 2, Rep. A.G., P.D. No. 12 at 42-44 (1972) (discussing the broad scope of the Board of Trustees' statutory authority under G.L. c. 75); see also St. 1960, c. 773, § 2 (containing similar provision for University of Massachusetts Building Authority).

In relevant part, G.L. c. 111, § 127A, provides that the Department of Public Health "shall adopt, and may from time to time amend, public health regulations to be known as the state sanitary code," which code "shall deal with matters affecting the health and well-being of the public in the commonwealth in subjects over which the department takes cognizance and

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[1] Similarly, to the extent that the University of Massachusetts Building Authority retains any control over the University's facilities, I note that the Authority was constituted by the Legislature as "a public instrumentality and the exercise by the Authority of the powers conferred by [its enabling legislation] shall be deemed and held to be the performance of an essential governmental function." St. 1960, c. 773, § 2; see also Department of Community Affairs v. Massachusetts State College Building Authority, 378 Mass. 418, 426 (1979) (public character of College Building Authority requires inclusion within definition of term "public agency" under G.L. c. 79A).

responsibility." Id. Local boards of health "shall enforce said code in the same manner in which local health rules and regulations are enforced, but, if any such local boards fail after the lapse of a reasonable length of time to enforce the same, the department may in like manner enforce said code against any violator." Id.

As noted above, several prior Attorney General opinions conclude that, absent a clear legislative directive to the contrary, the Commonwealth is to be considered exempt from a generally applicable regulation promulgated under the authority of statutes enacted by the Legislature in the exercise of its police powers. See 2000 Op. Att'y Gen. No. 1 (Oct.30, 2000) (concluding that the State Fire Code promulgated under G.L. c. 148 does not apply to state-owned buildings) and opinions cited therein.[2] This rule is closely related to the rule that the Commonwealth cannot be sued in its own courts except in strict accordance with statute. In that context also, "[t]he rules of construction governing statutory waivers of sovereign immunity are stringent. . . . Consent to suit must be expressed by the terms of a statute, or appear by necessary implication from them." Woodbridge v. Worcester State Hospital, 384 Mass. 38, 42 (1981); accord C & M Construction Co. v. Commonwealth, 396 Mass. 390, 392 (1985); see also Onofrio v. Department of Mental Health, 411 Mass. 657, 659 (1992) (holding statute that waives public employers' exemption from liability, bars prejudgment interest, and is silent on postjudgment interest does not permit award of postjudgment interest by necessary implication, given that such interest is not an element of damages).

As with the doctrine of sovereign immunity, although the Legislature may elect to waive

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[2] This principle does not apply to municipalities. See, e.g., 1965/66 Op. Att'y Gen. No. 12, Rep. A.G., P.D. No. 12 at 361 (1966) (concluding that State Sanitary Code applies to public school cafeterias, where neither the statute nor the Code exempts schools or cafeterias).

the Commonwealth's exemption from regulation in particular instances, such a waiver is not to be presumed or inferred, but must be explicit. See, e.g., Perez v. Boston Housing Authority, 368 Mass. 333, 338, 340 (1975) (concluding that "the Legislature did not intend to establish liability on the part of the Commonwealth or its departments" in enacting G.L. c. 111, § 127N, the statute authorizing tenants of public housing to bring actions to enforce the Sanitary Code, after finding that the terms of the statute "are plainly inappropriate to identify the State or any of its agencies"); Inspector of Buildings of Salem v. Salem State College, 28 Mass. App. Ct. 92, 97 (1989) (concluding that the language of G.L. c. 40A, § 3, the State Zoning Act, does not amount to the "express and unmistakable suspension" which would be required to find an express waiver of the usual State supremacy over land use regulation).

There is no express statement in G.L. c. 111, § 127A, indicating that the Commonwealth is subject to the provisions of any regulations adopted pursuant thereto.[3] By contrast to this provision, two other provisions of G.L. c. 111 contain express waivers of the Commonwealth's exemption from regulation, as discussed below. Thus, if the Legislature intends to make the Commonwealth subject to any provision of G.L. c. 111, it knows exactly how to do so. See Commonwealth v. Dodge, 428 Mass. 860, 865 (1999) ("[W]here the Legislature has employed specific language in one [section of an act], but not in another, the language should not be

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[3] I recognize that Chapter V of the State Sanitary Code, 105 C.M.R. § 435.00 et seq., by which the Department of Public Health established minimum standards for swimming pools, provides that no person shall operate or maintain a swimming pool without obtaining a permit from the Board of Health on a form prescribed by the Commissioner of Public Health, and defines the term "person" to include "a city, town, county, or other governmental unit." 105 C.M.R. §§ 435.01; id., § 435.21. However, even if the Department had expressly included the Commonwealth and its agencies within this definition, the limits to the scope of the Department's authority in such matters are set by the enabling statute, G.L. c. 111, § 127A.

implied where it is not present.") (internal quotation omitted).

In marked contrast to Section 127A, Section 142E of G.L. c. 111 contains an express waiver of the Commonwealth's exemption from public health regulation. In Perez v. Boston Housing Authority, 368 Mass. at 338-39, the Supreme Judicial Court compared Sections 142E and 127N of G.L. c. 111. With reference to air pollution control regulations promulgated pursuant to Section 142E of the statute, the Court stated that "when the Legislature did in fact determine to apply public health regulations, enacted pursuant to G.L. c. 111, to State agencies as well as other entities, it expanded the coverage . . . to include '[a]ll departments, agencies, commissions, authorities and political subdivisions.'" Id. at 338-39. By its terms, Section 142E creates a regulatory scheme that "is universally applicable to private and public entities." City of Boston v. Massachusetts Port Authority, 364 Mass. 639, 658 (1974). The air pollution control regulations are thus "enforceable against public bodies to the same extent that they are enforceable against individuals and private businesses." Id. at 653.[4]

Similarly, Section 150A of G.L. c. 111 contains an express waiver of the Commonwealth's exemption from regulation. In the context of the state-wide regulation of the siting of solid waste disposal facilities, the Legislature specified that the procedures regarding the Department of Environmental Protection's oversight of the location and operation of such facilities are applicable to facilities "owned or operated by an agency of the commonwealth." G.L. c. 111, § 150A. In like manner, G.L. c. 143, the statute that authorizes the promulgation and enforcement of a state-wide building code, contains an explicit waiver of the Commonwealth's

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[4] In particular, such regulations apply to the Port Authority given that the statute expressly includes authorities within its terms. Id. at 653, 657.

exemption from regulation. In particular, Chapter 143 states that its provisions

> relative to the safety of persons in buildings shall apply to buildings and structures, other than the state house, owned, operated or controlled by the commonwealth, and to buildings and structures owned, operated or controlled by any department, board or commission of the commonwealth, or by any of its political subdivisions, in the same manner and to the same extent as such provisions apply to privately owned or controlled buildings occupied, used or maintained for similar purposes.

G.L. c. 143, § 2A. By contrast to such provisions, G.L. c. 111, § 127A, the statute by which the Department of Public Health promulgated the Sanitary Code, contains no such express waiver of the Commonwealth's exemption from regulation.

Furthermore, the well established presumption against delegation to municipalities of any authority to regulate the Commonwealth supports this conclusion, given that G.L. c. 111, § 127A, vests local boards of health with primary enforcement of the Sanitary Code. This presumption is traced back to the seminal case of Teasdale v. Newell & Snowling Construction Co., 192 Mass. 440 (1906), in which the City of Quincy Board of Health attempted to bar a state contractor from establishing a temporary stable to be used during its work on a project to create parkland because the contractor had not obtained a stable license from the Board as was assertedly required by statute. That effort failed because "[i]t is not to be presumed that the Legislature intended to give to the local licensing board the authority to thwart the reasonably necessary efforts of the park commissioners to perform their duty as agents of the State." Id. at 443.

By contrast to G.L. c. 111, § 127A, which vests primary enforcement of the Sanitary Code with local boards of health, several statutory provisions with an express waiver of the Commonwealth's exemption from regulations provide for enforcement of the regulations by the

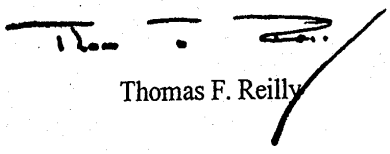
relevant state agency as to state-owned property, while providing for local enforcement as to all other property, so as to avoid the potential for local interference with state work. For example, G.L. c. 143 vests inspectors in the Division of Inspections of the Department of Public Safety with authority to enforce the state building code as to buildings "owned by the commonwealth or any departments, commissions, agencies or authorities of the commonwealth," while the statute vests local inspectors with authority to enforce the code as to all other buildings. G.L. c. 143, § 3A. Similarly, Section 150A of G.L. c. 111 vests the Department of Public Health with authority to determine whether to assign as a site for a solid waste disposal facility a place owned or operated by an agency of the Commonwealth, while the statute vests local boards of health with authority to make such determinations for any other place. Id.

Local boards of health have primary responsibility for enforcing the Sanitary Code under G.L. c. 111, § 127A. The potential for local interference with state work is one of the grounds on which Massachusetts courts have found the Commonwealth and its agencies to be exempt from proscriptions set forth in a generally applicable statute enacted by the Legislature in the exercise of its police powers, absent explicit legislative directive to the contrary. See, e.g., Inspector of Buildings of Salem v. Salem State College, 28 Mass. App. Ct. at 97. It is significant in this regard that the University's enabling statute prevents interference with the Board of Trustees, in exercising its statutory authority to manage the University's affairs, from being "subject to, or superseded by," state agencies or departments." G.L. c. 75, § 1. In light of that provision, it would be anomalous to suppose that the Legislature intended to subject the University to local

supervision, absent explicit language to that effect.[5]

Accordingly, I conclude that facilities located on property owned by the University of Massachusetts are not subject to the Sanitary Code, and that the local boards of health therefore lack authority to enforce the provisions of the Code against such property. As mentioned above, the officials in control of such facilities may elect to comply voluntarily with the provisions of the Sanitary Code, and you may wish to consider whether to propose legislation expressly making the Sanitary Code applicable to such facilities.

Sincerely,



Thomas F. Reilly

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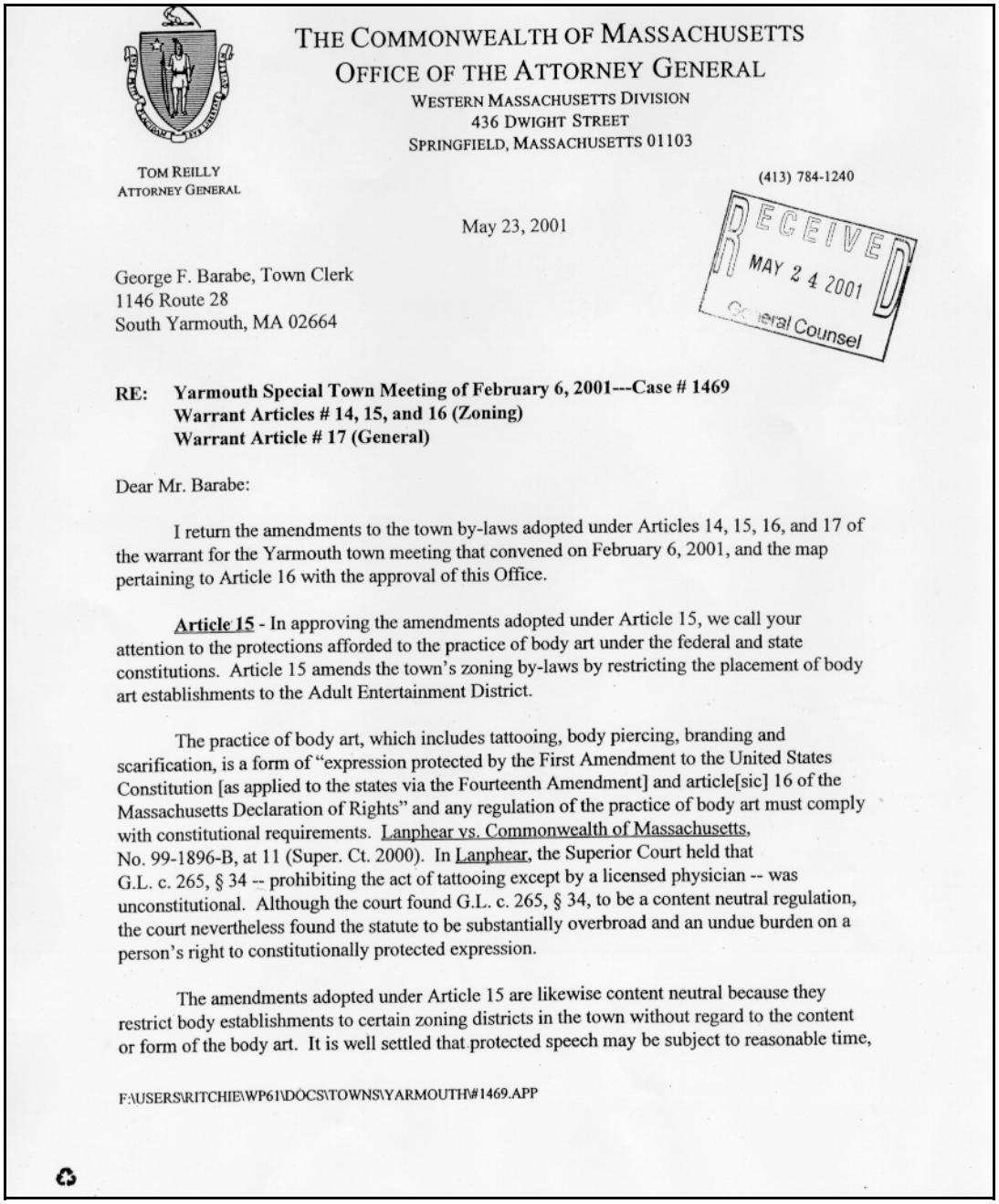
[5] I am aware of an order issued in December of 1983 by the Hampshire Superior Court in Trejo v. Penza (C.A. No. 16871), an action brought by a student of the University of Massachusetts against the local housing inspector, seeking an order compelling an inspection of the student's apartment on campus. After the court denied the student's request for class certification, the court entered a one-page order on the student's motion for summary judgment, declaring that the local board of health is obligated to inspect dwellings located within the Town, upon request, including dwelling units owned or controlled by the University. Neither the University or the Department of Public Health were parties to the case, and no appeal was taken from the court's decision. In addition, the order does not address the issues raised herein. For these reasons, it is my opinion that the order is not controlling here.

Attorney General Raises Questions about a Community By-Law that Restricts the Practice of Body Art to Adult Entertainment Districts

In approving a zoning by-law providing for the restriction of body art to the Adult Entertainment District, the Attorney General also raises, but does not address the constitutional issue: "we do not opine as to whether the area actually available for body art establishments in Yarmouth would be held to be constitutionally sufficient if reviewed by a court or whether a court would determine that, when taken as a whole, the Town's by-law has the effect of prohibiting or unduly restricting body art protected by the federal and state constitutions



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
WESTERN MASSACHUSETTS DIVISION
436 DWIGHT STREET
SPRINGFIELD, MASSACHUSETTS 01103

TOM REILLY
ATTORNEY GENERAL

(413) 784-1240

RECEIVED
MAY 24 2001
General Counsel

May 23, 2001

George F. Barabe, Town Clerk
1146 Route 28
South Yarmouth, MA 02664

RE: Yarmouth Special Town Meeting of February 6, 2001---Case # 1469
Warrant Articles # 14, 15, and 16 (Zoning)
Warrant Article # 17 (General)

Dear Mr. Barabe:

I return the amendments to the town by-laws adopted under Articles 14, 15, 16, and 17 of the warrant for the Yarmouth town meeting that convened on February 6, 2001, and the map pertaining to Article 16 with the approval of this Office.

Article 15 - In approving the amendments adopted under Article 15, we call your attention to the protections afforded to the practice of body art under the federal and state constitutions. Article 15 amends the town's zoning by-laws by restricting the placement of body art establishments to the Adult Entertainment District.

The practice of body art, which includes tattooing, body piercing, branding and scarification, is a form of "expression protected by the First Amendment to the United States Constitution [as applied to the states via the Fourteenth Amendment] and article[sic] 16 of the Massachusetts Declaration of Rights" and any regulation of the practice of body art must comply with constitutional requirements. Lanphear vs. Commonwealth of Massachusetts, No. 99-1896-B, at 11 (Super. Ct. 2000). In Lanphear, the Superior Court held that G.L. c. 265, § 34 -- prohibiting the act of tattooing except by a licensed physician -- was unconstitutional. Although the court found G.L. c. 265, § 34, to be a content neutral regulation, the court nevertheless found the statute to be substantially overbroad and an undue burden on a person's right to constitutionally protected expression.

The amendments adopted under Article 15 are likewise content neutral because they restrict body establishments to certain zoning districts in the town without regard to the content or form of the body art. It is well settled that protected speech may be subject to reasonable time,

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place, and manner restraints as long as such restraints further an important or substantial governmental interest; the governmental interest is unrelated to the suppression of free expressions, and the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interests. Lanphear vs. Commonwealth of Massachusetts, supra, at 11, citing, Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622, 662 (1994).

Although we approve Article 15, we do not opine as to whether the area actually available for body art establishments in Yarmouth would be held to be constitutionally sufficient if reviewed by a court or whether a court would determine that, when taken as a whole, the Town's by-law has the effect of prohibiting or unduly restricting body art protected by the federal and state constitutions. Under the provisions of General Laws Chapter 40, Section 32, the Attorney General's limited power of disapproval requires that the Attorney General cite a facial inconsistency between the by-law adopted by the town and the constitution or laws of the Commonwealth. Although we find no facial inconsistency, nevertheless, we urge you to consult with town counsel as to whether, as applied, the by-law is consistent with constitutional requirements.

Very truly yours,

THOMAS F. REILLY
ATTORNEY GENERAL

by: Robert W. Ritchie, Assistant Attorney General
Director, Municipal Law Unit
436 Dwight Street
Springfield, MA 01103-1317
(413) 784-1240, x 26

enc.
pc:

Town Counsel

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Consumer Questions and Answers About BSE

U. S. Food and Drug Administration
March 2001
http://www.cfsan.fda.gov/~comm/bsefaq.html
Accessed: May 7, 2001

What is "Mad Cow Disease" (Bovine Spongiform Encephalopathy)?

Mad Cow Disease is the layperson's name for Bovine Spongiform Encephalopathy (BSE), a transmissible, slowly progressive, degenerative, fatal disease affecting the central nervous system of adult cattle. **There is no evidence to date of BSE affecting American cattle.**

Does BSE affect humans?

BSE is a disease that affects cattle. However, there is a disease similar to BSE called variant Creutzfeldt-Jakob Disease (CJD), or vCJD, which is found in humans. There have been a small number of cases of vCJD reported, primarily in the United Kingdom, occurring in people who consumed beef contaminated with an infective agent. (As of February 2001, there have been a total of 92 cases of vCJD worldwide—including 88 in the U.K., three in France and one in Ireland.) There is strong scientific evidence (epidemiological and laboratory) that the agent that causes BSE in cattle is the agent that causes vCJD in people. **There are no reported cases of vCJD in the United States**.

The disease, vCJD, which primarily affects younger persons, is very hard to diagnose until the disease has nearly run its course. In its early stages, the disease may manifest itself through neurologic symptoms but it is not until the latter stages of the disease that brain abnormalities detectable by x-ray or MRI can be seen.

Is it possible to get vCJD from eating food purchased in the United States?

The disease, vCJD, has been associated with the consumption of foods produced from BSE infected animals. Because BSE has never been found in the U.S., it is unlikely that food purchased in the US such as at a grocery store or restaurant would be contaminated. The U.S. Department of Agriculture's Animal and Plant Health Inspection Service has restricted the importation of live ruminants, such as cows and sheep, and food products from these animals from BSE countries since 1989, and from all European countries since 1997. Thus it is highly unlikely that a person would contract vCJD today by eating food purchased in the United States.. It is important for consumers to know that:

- No meat products from the 31 countries identified as having BSE or at risk for having BSE are allowed in the U.S. This includes meat products used in human, animal, and pet foods. Milk and milk products continue to be imported into the US from these countries because milk and milk products are not believed to pose any risk for transmitting BSE to humans. Experiments have shown that milk from BSE-infected cows has not caused infections in the same species or in other test animals.
- FDA requires that gelatin-containing products such as candy or capsules imported from the 31 countries identified as having BSE or at risk for having BSE be manufactured under specific guidance and certified as such to ensure they are safe for American consumers. FDA guidelines require gelatin to be made from non-BSE herds and use only specific parts of BSE-free animals in the rendering process.
- Dietary supplements and certain cosmetic ingredients containing bovine materials from animals originating in the 31 countries where BSE has been found or is at risk for being found, are excluded from the US.

What is being done to determine whether the newly recognized vCJD is occurring in the United States?

With heightened concern about vCJD in Europe, the Centers for Disease Control and Prevention have enhanced their vCJD surveillance in the U.S. **To date, there have been no cases of vCJD identified in the United States**.

What is the current risk to Americans traveling to Europe of acquiring vCJD?

In the United Kingdom, the current risk appears to be extremely small, perhaps about 1 case per 10 billion servings of beef. In the other countries of Europe, the current risk, if it exists at all, would not likely be any higher than that in the United Kingdom, except possibly in Portugal. In the 12-month period ending June 15, 2000, Portugal had about half the reported incidence of BSE cases per 1 million adult cattle as that reported in the United Kingdom; however, Portugal has only recently implemented BSE-related public health control measures.

According to the Centers for Disease Control and Prevention, the current risk of acquiring vCJD from any specific country cannot be precisely determined because cattle products from one country might be distributed and consumed in others.

For travelers concerned about reducing their possible risk of acquiring vCJD from food, CDC suggests:
when traveling in Europe, avoid eating beef and beef products or
when traveling in Europe, eat only select beef or beef products, such as solid pieces of muscle meat (versus ground beef products such as burgers and sausages that contain meat from various parts of the animal). Solid pieces of muscle meat may have less opportunity for contamination with tissues such as the brain or spinal cord that might harbor the BSE agent.

Milk and milk products from cows are not believed to pose any risk for transmitting the BSE agent because experiments have shown that milk from BSE-infected cows has not caused BSE in cows or other test animals.

When and how did BSE in cattle occur?

BSE has been of great concern since 1986, when it was first reported among cattle in the United Kingdom. At its peak, in January 1993, almost 1,000 new cases per week were identified. The outbreak in the United Kingdom may have started from the feeding of scrapie-contaminated sheep meat-and-bone meal to cattle. Scrapie is a disease of sheep that is related to BSE in cattle. There is strong evidence that the outbreak in cattle was amplified in the United Kingdom by feeding rendered bovine meat-and-bone meal to young calves.

The nature of the transmissible agent in BSE is not known. Currently, the most accepted theory is that the agent is a modified form of a normal cell surface component known as a prion protein, which is a pathogenic form of the protein. Why or how this substance changes to become disease-producing is still unknown. Prions are resistant to common treatments, such as heat, to reduce or eliminate its infectivity or presence.

What countries have reported cases of BSE or are considered to have a substantial risk associated with BSE?

These countries are: Albania, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Federal Republic of Yugoslavia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Former Yugoslavia Republic of Macedonia,

The Netherlands, Norway, Oman, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland and United Kingdom (Great Britain including Northern Ireland and the Falkland Islands).

Is BSE affecting cattle in the United States?

There are **no known cases** of the BSE in the United States due to the active surveillance and import measures taken by the Food and Drug Administration and the U.S. Department of Agriculture over the past ten years. These and other federal and state agencies and industry groups have taken a series of actions to prevent the introduction of BSE into the US food supply.

For example, to prevent BSE from entering the United States, firm restrictions were placed on the importation of live ruminants and ruminant products including meat, meat-and-bone meal, offals, glands, etc., from countries where BSE was known to exist. These restrictions were later extended to include importation of ruminants and certain ruminant products not only from BSE-positive countries, but also countries thought to be at high risk for BSE, even if the disease hadn't been identified in those countries.

In addition, FDA prohibits the use of most mammalian protein in the manufacture of animal feeds given to ruminants because this kind of feeding practice is believed to have initiated and amplified the outbreak of BSE in the United Kingdom.

Is the disease, BSE, affecting cattle in Europe the same as the disease, CWD, affecting elk and deer in the US?

BSE is a disease of cattle. However, a related disease, Chronic Wasting Disease (CWD), does occur in a small number of American elk and deer in certain parts of the country, particularly Colorado and Wyoming. FDA is working closely with other government agencies and the public health community to address CWD in wild and domesticated herds. Wildlife officials in Colorado and Wyoming have advised individuals not to harvest, handle, or consume any wild deer or elk, especially in those states, that appear to be sick, regardless of the cause.⁂

This document was issued in March 2001.
For more recent information on Bovine Spongiform Encephalopathy (BSE)
See http://www.fda.gov/oc/opacom/hottopics/bse.html

Foot and Mouth Disease Prevention Information

For Passengers Traveling To The United States From FMD Infected Regions of the World

United States Department of Agriculture
Animal and Plant Health Inspections Service
Veterinary Services
http://www.aphis.usda.gov/oa/fmd/travinfo.html
Accessed: May 7, 2001

In response to the increasing number of foot-and-mouth disease (FMD) outbreaks worldwide, travelers to the United States from infected regions need to take steps to help prevent the accidental introduction of the disease into this country.

FMD is not considered a human health risk but humans can carry the virus on their clothing, shoes, body (particularly the throat and nasal passages) and personal items. The disease is extremely contagious and spreads easily among cloven-hoofed animals such as cattle, sheep, pigs, goats and deer. Introduction of FMD into this country would be disastrous to the American livestock industry and wildlife community. For this reason all visits to farms or other livestock facilities in FMD infected areas and all food items and other materials of plant or animal origin in the traveler's possession **must** be reported on the U.S. Customs Declaration Form upon entering the country.

The following preventive measures should be taken by travelers to the United States from FMD infected countries:

1. Avoid farms, sale barns, stockyards, animal laboratories, packing houses, zoos, fairs or other animal facilities for 5 days prior to travel.
2. Before travel to the United States, launder or dry clean all clothing and outerwear. All dirt and soil should be removed from shoes by thorough cleaning. Luggage and personal items (including watches, cameras, laptops, CD players and cell phones), if soiled, should be wiped clean.
3. Avoid contact with livestock or wildlife for 5 days after arrival in the United States.

Extra precautionary measures should be taken by people traveling from farms in infected locales to visit or work on farms in the United States. It is advisable that employers or sponsors provide arriving travelers with a clean set of clothing that can be worn after the visitor showers and shampoos thoroughly. Visitor's traveling clothes should be laundered or dry cleaned immediately. Off-farm activities should be scheduled for the visitor's first 5 days in-country and contact with livestock or wildlife should be strictly avoided.⁂

FDA Finalizes Safe Handling Labels and Refrigeration Requirements for Marketing Shell Eggs

U.S. Department of Health and Human Services

November 30, 2000

http://www.cfsan.fda.gov/~lrd/hhseggs2.html

Accessed: May 7, 2001

Consumers will soon have more safe handling information and new refrigeration requirements to help prevent foodborne illness from eggs contaminated with *Salmonella* Enteritidis.

The U.S. Food and Drug Administration today issued a final regulation, to improve food safety as it pertains to eggs. The refrigeration requirement will be effective in 6 months, while the safe handling requirement will be effective in 9 months.

"The Clinton administration has consistently demonstrated its commitment to food safety and ensuring that the United States continues to have one of the safest food supplies in the world," said Dr. Jane E. Henney, FDA Commissioner. "Today's efforts should go a long way toward preventing illness that has been attributed to eggs in the past."

Today's regulation will require shell egg cartons to bear safe handling instructions because of eggs' association with Salmonella Enteritidis (SE), a bacterium responsible for foodborne illness. Approximately one out of every 20,000 eggs produced in the United States is estimated to be contaminated with SE. The required statement is as follows:

> **SAFE HANDLING INSTRUCTIONS:** To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly.

SE outbreaks have been attributed to undercooked eggs and foods containing undercooked eggs served in homes, private gatherings and commercial establishments.

"For consumers, eggs can be an important source of nutrition," says Dr. Henney. "You just need to cook your eggs thoroughly - no sunny side up, no over easy. This is a case when it's better to be safe than sorry."

Persons infected with *SE* may experience diarrhea, fever, abdominal cramps, headache, nausea and vomiting. However, children, the elderly and persons with weakened immune systems may develop severe or even life-threatening illness.

Additionally, the rule requires that eggs be placed promptly under refrigeration at 45 degrees Fahrenheit or lower upon delivery at retail establishments (supermarkets, restaurants, delis, caterers, vending operations, hospitals, nursing homes and schools). Refrigeration at an ambient temperature of 45 degrees Fahrenheit or cooler slows the growth and development of *SE*.

This rule is one part of the larger Egg Safety Action Plan, a farm-to-table approach for ensuring the safety of our nation's egg supply, which was announced by the President on December 11, 1999. The Plan, a joint effort by the FDA and the Department of Agriculture, seeks to reduce by 50 percent the number of *SE* illnesses attributed to contaminated eggs by 2005 and eliminate egg-associated *SE* illnesses by 2010.

The Egg Safety Action Plan will further enhance the strides that have already been made in reducing the incidence of *SE*. Efforts by federal regulatory agencies, public health prevention initiatives, egg producer quality assurance programs, and consumer education have significantly contributed to the decrease in *SE* incidence.⁂.

Playing It Safe With Eggs

Food Safety Facts for Consumers
Center for Food Safety and Applied Nutrition
U.S. Food and Drug Administration
February 2001
http://vm.cfsan.fda.gov/~dms/fs-eggs.html
Accessed on May 7, 2001

To avoid the possibility of foodborne illness, fresh eggs must be handled carefully. Even eggs with clean, uncracked shells may occasionally contain bacteria called *Salmonella* that can cause an intestinal infection. The most effective way to prevent egg-related illness is by knowing how to buy, store, handle and cook eggs - or foods that contain them - safely. That is why the U.S. Food and Drug Administration (FDA) requires all cartons of shell eggs that have not been treated to destroy *Salmonella* must carry the following safe handling statement:

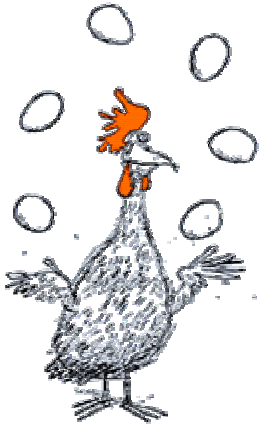
> Safe Handling Instructions: To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly. *

Following these instructions is important for everyone but especially for those most vulnerable to foodborne disease–children, the elderly, and persons with weakened immune systems due to steroid use, conditions such as AIDS, cancer or diabetes, or such treatments as chemotherapy for cancer or immune suppression because of organ transplants.

Eggs that have been treated to destroy *Salmonella* - by in-shell pasteurization, for example - are not required to carry safe handling instructions.

Buy Right

- Buy eggs only if sold from a refrigerator or refrigerated case. T
- Open the carton and make sure that the eggs are clean and the shells are not cracked.
- **Refrigerate promptly.**
  - Store eggs in their original carton and use them within 3 weeks for best quality.



Keep Everything Clean

Before preparing any food, remember that cleanliness is key!

- Wash hands, utensils, equipment, and work surfaces with hot, soapy water **before** and **after** they come in contact with eggs and egg-containing foods

Cook Thoroughly

Thorough cooking is perhaps the most important step in making sure eggs are safe.

- **Cook eggs until both the yolk and the white are firm. Scrambled eggs**

should not be runny.

- **Casseroles and other dishes containing eggs should be cooked to 160°F (72°C). Use a food thermometer to be sure.**
- For recipes that call for eggs that are raw or undercooked when the dish is served - Caesar salad dressing and homemade ice cream are two examples - use either shell eggs that have been treated to destroy *Salmonella*, by pasteurization or another approved method, or pasteurized egg products. Treated shell eggs are available from a growing number of retailers and are clearly labeled, while pasteurized egg products are widely available.
-

Serve Safely

Bacteria can multiply in temperatures from 40°F (5°C) to 140°F (60°C), so it's very important to serve foods safely.

- Serve cooked eggs and egg-containing foods immediately after cooking.
- For buffet-style serving, hot egg dishes should be kept hot, and cold egg dishes kept cold.
- Eggs and egg dishes, such as quiches or soufflés, may be refrigerated for serving later but should be thoroughly reheated to 165°F (74°C) before serving.
-

Chill Properly

- Cooked eggs, including hard-boiled eggs, and egg-containing foods should not sit out for more than 2 hours. Within 2 hours either reheat or refrigerate.
- Use hard-cooked eggs (in the shell or peeled) within 1 week after cooking
- Use frozen eggs within one year. Eggs should not be frozen in their shells. To freeze whole eggs, beat yolks and whites together. Egg whites can also be frozen by themselves.
- Refrigerate leftover cooked egg dishes and use within 3-4 days. When refrigerating a large amount of a hot egg-containing leftover, divide it into several shallow containers so it will cool quickly.

On the Road

- Cooked eggs for a picnic should be packed in an insulated cooler with enough ice or frozen gel packs to keep them cold.
- Don't put the cooler in the trunk - carry it in the air-conditioned passenger compartment of the car.
- If taking cooked eggs to work or school, pack them with a small frozen gel pack or a frozen juice box.

[*] The Safe Handling Statement must appear on all cartons of untreated shell eggs by September 2001.

[T] FDA also requires that, by June 2001, untreated shell eggs sold at stores, roadside stands, etc., must be stored and displayed under refrigeration at 45° F (7°C).⁂

For more information on handling Eggsand other foods safely, call toll-free
1 (888) SAFEFOOD
U.S. FOOD AND DRUG ADMINISTRATION
Center for Food Safety and Applied Nutrition
Food Information line 24 hours a day,
or visit the FDA's Food Safety Website:
www.cfsan.fda.gov

Catered Meals to Off-Site Feeding Locations

A growing trend in the food industry is food service establishments, licensed under 105 CMR 590.000, providing single meals to privately and publicly sponsored programs (hereinafter "programs") usually intended for children and seniors. Until recently, for the most part, such programs prepared the food on site. The Department is now seeing an increased number of food establishments that prepare the food or meals for the programs at their establishments and then deliver the food or contract for its delivery to another site where it is served by program staff. The meals may be individually packaged for single service or provided in bulk for dispensing on site at a specific meal. Food establishments providing food in this manner may be classified as caterers if they meet specific criteria.

Criteria for Classification as a Caterer

In order to qualify as a caterer for the purpose of this policy and to be exempt from licensure as a wholesale food processor under M.G.L. c. 94, §305C, the food service establishment must demonstrate that:

1. Food is pre-ordered for a single meal;
2. Meals are prepared and delivered for a specific meal, either in individual portions or in bulk portions intended for individual service at a specific meal;
3. Meals are fully cooked or prepared by the caterer;
4. Meals are stored and delivered under required temperatures;
5. Such other requirements, as the Department deems relevant to the classification.

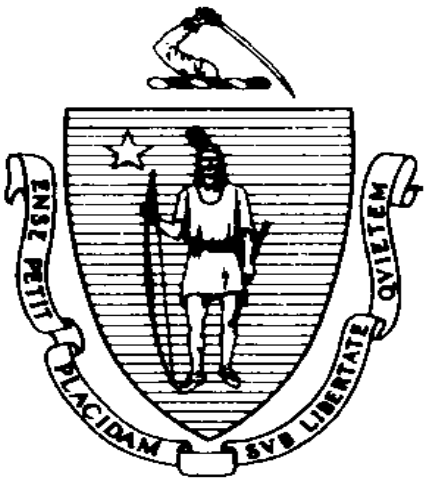
Policy

The Massachusetts Department of Public Health, Division of Food and Drugs, determines, that food service establishments are caterers and shall be exempt from licensure as a wholesale food processor it they: (1) prepare food intended for individual service and delivered to a feeding site as described above, and (2) meet the above-referenced criteria. Caterers are licensed and inspected by local boards of health as one category of food service establishments, and as such are subject to the provisions of 105 CMR 590.000, Minimum Sanitation Standards for Food Establishments. Nothing in this policy is intended to restrict the definition of caterer in 105 CMR 590.000.⁂

[1] For the purposes of this policy, food service establishments include caterers, restaurants, and institutional kitchens (nursing homes, hospitals, and schools). This includes more traditional catering operations as well as institutional kitchens, but also restaurants that are providing fast food or pizza as single meals for programs. They shall collectively be referred to as caterers, if they meet the criteria defined herein.

[2] Programs include, but are not limited to, day care centers, head start programs, senior centers, and "meals on wheels."

Guidelines
for Evaluating Food Products for Salvage and Reconditioning



Massachusetts Department of Public Health
Division of Food and Drugs
Food Protection Program

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INTRODUCTION

These guidelines should be used while conducting an inspection to evaluate food that has potentially been exposed to contamination for salvage and reconditioning. The guidelines address the basic information an inspector needs for inspecting potentially contaminated food, and the procedures to follow when a variety of violations and conditions are encountered. As with any type of inspection or investigation, proper written documentation is required.

It is vital to remember when conducting this type of inspection that:

Distressed merchandise must never enter the food market place until it has been fully reconditioned, inspected, and released by the health department under whose jurisdiction it resides.

Food products may become contaminated or distressed from a variety of events, including but not limited to:

- fires
- flooding
- power outages
- ammonia leaks
- chemical spills
- transportation accidents

In every food salvage operation the treatment of affected merchandise must be completed in an orderly, thorough, non-biased manner. Food may only be reconditioned at a facility licensed by the Massachusetts Department of Public Health, Division of Food and Drugs. After reconditioning, food product must be:

- safe and wholesome;
- sound;
- free from contamination;
- labeled with all mandatory statements; and
- inspected by local or state health department personnel before being released.

If there is any uncertainty about the quality or soundness of a product following reconditioning, before any product is released, samples must be obtained, the appropriate laboratory analyses performed, and satisfactory results obtained.

GENERAL PROCEDURES

Upon arrival at the site of the incident, the inspector must assess the nature and extent of the damage. This information will form the basis upon which future decisions regarding the feasibility of salvaging and/or reconditioning the product will be made. Upon arrival the inspector should:

- identify himself/herself to the senior company representatives and any other regulatory or law enforcement personnel present;
- identify the nature and extent of the incident;

- determine the extent of damage to the food products;
- place an embargo on all potentially affected food products, if this has not already been done; and
- inventory the type and quantity of foods, whenever possible.

An embargo placed on potentially contaminated product is valid for ten days. The inspector should determine whether or not the owner of the affected product will consent to extend the embargo until such time it is inspected to determine whether or not it is damaged and can be reconditioned. If the owner consents, this should be documented in the narrative accompanying the inspection. If the owner/agent does not consent to the extension, the inspector must follow the procedures for embargoed products as defined in M.G.L. c. 94, §§ 146, and 189A and 105 CMR 590.059.

All questions concerning the salvage and reconditioning of alcoholic beverages must be addressed directly to the Massachusetts Alcohol Beverages Control Commission at (617) 727-3040, or in writing to 100 Cambridge Street, Boston, MA 02202

INSPECTION OF FOOD FOR SALVAGE

The following are some of the more common situations encountered by an inspector where there is a substantial chance that food products have been contaminated. While the circumstances and potential contaminants may be different in each situation, the inspector's responsibility for determining which, if any, foods are appropriate for salvage and reconditioning remains the same.

Fire Damage

Before conducting an inspection of food products located in a facility damaged by fire, a determination should be made, as far as possible, of the following:

- exact source, extent, and location of the fire in the facility;
- amount of smoke and heat generated by the fire;
- type of fire, i.e., electrical, chemical, building structure, paper or a combination of types;
- release of any toxic gases;
- did a power outage occur and if so, how long was power lost; and
- proximity of all potentially affected food products to the source and spread of the fire.

After this information has been collected, an examination of the scene should be conducted to evaluate:

- exposure of product to heat, physical damage (floating and falling debris) or smoke damage;
- water damage from fire fighting activities;
- pollution from the use of non-potable water in fire fighting effort; and
- residues from toxic or fire fighting chemicals.

It is extremely important to remember that chemical contamination can occur not only as a direct result of the fire, but also as a result of secondary means. Examples include:

- chemical containers rupturing from heat or impact during the fire;
- cross-contamination introduced to the site;
- gases released from burning building materials, electrical insulation, or cooling chemicals; and
- large commercial transformers in the fire area that may leak or spread toxic chemicals.

Determining the extent of damage from smoke contamination is difficult. When trying to determine the extent of damage, it is important to consider the type of packaging in which the food is stored. Smoke smell and taste lingers on packages and may have been absorbed by foods that may otherwise appear satisfactory. Using a clean paper towel or tissue, wipe the package to detect traces of smoke/soot. To examine distressed foods organoleptically, remove them to an area where the smoke odor of the fire is not present. An inspector's sense of smell and taste may be the most valuable tools in determining smoke contamination in cooler display cases, etc. Smoke can be carried inside refrigeration units by the circulating fans on the units even though the doors may not have been opened during the fire. Food display cases which may be loosely covered or poorly sealed can easily be infiltrated by smoke. Individually wrapped candies, packaged nuts in the shell, etc. may be less susceptible to contamination, but items such as pasta, baked goods, unwrapped candies and nuts must be closely scrutinized. Whenever in doubt, collect samples for laboratory analysis.

Chard goods or food products, especially when found in water soaked containers, are rarely salvageable. An inspector must use common sense when considering the many factors involved in potential fire/smoke contamination.

Ammonia Leaks

Contamination from ammonia leaks involves the absorption of ammonia fumes into the product as a result of prolonged exposure to fumes, either by direct exposure or absorption through permeable packaging. If foods exposed to an ammonia leak are to be reconditioned, the following procedures must be followed during the salvaging and reconditioning:

- Product must be removed from the area of the ammonia leak as soon as possible;
- Packaged food within a bulk corrugated container must be removed as soon as possible, because ammonia is readily absorbed by corrugated cases; and
- Food products should be repackaged and moved to a segregated, empty storage area unaffected by the ammonia leak.

Some packaging materials are more permeable by ammonia than others. The more permeable the packaging, the less likely the product can be salvaged. The following barrier characteristics should be noted when deciding whether a food product exposed to ammonia should be salvaged or destroyed.

- Water glaze or ice on food will absorb ammonia, but the rinsing action of melting ice may eliminate the ammonia;

- Loose packed, individually quick-frozen (I.Q.F.) foods are more susceptible to contamination than block frozen foods;
- Kraft and other types of paper products are extremely permeable;
  - Waxed paper overwrap and waxed cardboard are extremely permeable;
  - Plastic films (polyethylene, saran, cryovac, etc.) are less permeable; and
  - Brass, metal, and heavy aluminum foil or foil-lined packaging are often the best barriers.

Water Damage

Water damage caused by excessive rainfall, melting snow, hurricanes, high tides, broken dams, broken pipes, activated sprinkler systems, overflow from water mains, or flooding from fire fighting operations can be either localized or extensive. All water, regardless of its source, must be considered to be a pollutant because of the possibility of overflowing sewers, pit privies, and street run-off water.

When an inspector arrives at the scene of potential product contamination from water damage, the inspector should:

- Survey the extent of damage and ascertain the type of merchandise affected, e.g., food, drugs, cosmetics, etc.
- Check the walls of the storage areas and the tops and sides of the stacked products for water residue, debris, and the high-water mark. The high-water mark will usually be a well-defined dark line. Product stacked above the high-water line is often free of contamination unless other factors, such as vermin defilement or power outage in a refrigeration unit are present.
- Embargo all suspect products. Items such as breads, cakes, cookies, candies, bulk flour, sugar, bulk liquids, and similar items not packaged in jars or hermetically sealed containers probably will be contaminated and will need to be destroyed.
- Determine if a power outage occurred and its duration. If power was restored quickly and thawing or spoilage of refrigerated or frozen items was avoided and the product was not otherwise affected, its potential for reconditioning is high.
- While water may not have flooded the facility, the water levels may have caused sewer and waste lines to back-up into basements. Check for evidence of back up, such as debris, sewage particles on walls and on floors, or of sewer odors. Examine product for defilement by rodents, even if it was not directly affected by the water. Rodent activity increases in flooded areas when vermin are driven from their harborages and seek other areas for food and shelter.

Generally, any product that is submerged beneath water is unsalvageable and must be destroyed, with the exception of product packaged in hermetically sealed containers. These products can be sanitized and relabeled without the content becoming contaminated. However, be aware that if these containers are not quickly removed from the water and dried, pinholes may develop, making the product unsalvageable.

Power Outages
The principal issues for an inspection after a power outage are time and temperature. How long was the power out, and what were the resultant temperatures? Food products under refrigeration must be kept at 45º F (7.2º C) or below and frozen foods at 0º F (-18º C) or below. If frozen products thaw, decomposition or loss of quality can occur. To determine whether temperature abuse has occurred, measure the internal temperature of the product.

Vehicle Accidents
Most product damage occurs as a result of the physical impact. However, product can also be compromised if a vehicles refrigeration unit is damaged. As in a power outage, if product temperatures exceed 45º F (7.2º C), the product must be considered unsafe if out-of-temperature for an extended period. The internal temperature of the product should be monitored as often as possible while out of temperature control. Exposure to the weather may also adversely affect the product. Although illegal, toxic items traveling with the product may rupture and increase the possibility of contamination. Fuel spillage should also be a concern.

Salvage operations must be monitored until all salvageable products have been secured and segregated for shipment to a salvage processing facility. On-site monitoring of the salvage procedures by an inspector will discourage “scavengers” and expedite the salvage operation. While on site, the inspector should determine, as much as possible, which products should be destroyed and which may be salvageable.

Begin salvage operations as soon as possible. Delays in segregating good from bad product often increases the amount of loss. When on-site cleanup is complete, the inspector must record the amount of salvageable product and the amount of product contaminated or destroyed. Off-loading of salvageable product to another vehicle must be supervised, sealed, and retained under embargo. The replacement vehicle must remain sealed until the product arrives at the salvage processing facility. The inspector must record the following information on all reports:

- seal and embargo number
- trucking company name, address, contact person’s name and telephone number
- driver’s name
- origin of load
- bill of lading information
- destination
- consignee
- towing company name, address, contact person’s name, and telephone number
- destination of goods for salvage.

RECONDITIONING OPERATIONS

Food products affected by a disaster may be reconditioned into an acceptable condition. Acceptable reconditioning is dependent upon:

- the condition of the product;
- the type(s) of container in which the product is stored;

- the type(s) of product;
- the products intended use; and
- the kind and extent of contamination.

Reconditioning operations must be closely supervised by local and/or state health department personnel. Safeguards must be assured to account for the quality of the products prior to, during, and after the reconditioning operation. Control procedures must ensure that all unwholesome product is properly segregated and destroyed, and reconditioned product meets acceptable safety and quality standards. Products must remain under embargo at all times to ensure control. If possible, the inspector should supervise the entire reconditioning operation. If this is not possible, the reconditioner must contact the appropriate Health Department upon completion of the reconditioning operation in order to be granted an approval for the release of any good product and/or the destruction of the unacceptable product.

Perishable Products

Generally, the following types of products are not recommend for reconditioning:

- Milk products, because they are extremely perishable and highly susceptible to bacterial growth. Any attempts at salvaging and reconditioning such products are very risky. Careful laboratory testing must be conducted to determine the level of contamination.
- Fresh fruit and produce which have been contaminated by nonpotable water, smoke, ammonia, or chemicals cannot be adequately cleaned.

Under some limited circumstances, the reconditioning of perishable foods may be possible, such as:

- products which have not been directly contaminated;
- some frozen products which have partially thawed and can be refrozen without posing a public health hazard; and
- products which have been maintained at temperatures appropriate to their individual product requirements.

Foods in Plastic, Paper, Cardboard, Cloth or Similar Containers

Foods packaged in these containers that have sustained water damage usually cannot be reconditioned. Foods packaged in these containers that have been exposed to minor fire and/or smoke damage may be reconditioned, if the labels are intact and contents have not been affected. Products intended for use by infants, the elderly, or infirm, as well as sterile or drug products, while possibly safe, should not be considered for reconditioning.

The general guidelines for approval of product for reconditioning which were packaged in plastic, paper, cardboard, cloth, or similar containers are:

- There is no evidence of product contamination.
- The external container is torn but the interior liner is intact. The external container can be repaired/replaced to eliminate possible contamination of the product.
- The soiled containers that are cleanable, can be cleaned as long as the product has not been damaged or contaminated.

- When there has been water, chemical, or other liquid damage to the exterior package, without contamination to food contents, the food may be repackaged and relabeled.

General guidelines for products packaged in these types of containers which are **unsuitable** for reconditioning include:

- The product has been contaminated.
- Package integrity has been compromised and the product has been exposed to contamination.
- The package is fire damaged.
- The exterior packaging has been contaminated by solid, liquid, or gaseous elements and repackaging would expose the product to contamination.

Screw-top, Crimped cap, and Similar Closures

Food products in containers with screw caps, snap-lids, crimped caps, twist caps, flip tops, snap open, and similar-type closures should not be reconditioned if submerged in water or subjected to smoke contamination. Debris and contaminants in the water may be lodged under the cap lips, threads, lugs, crimps, and snap-rings, making them virtually impossible to detect and remove.

However, cans with flip tops can be sanitized with sanitizing solution. A careful examination should be made of the area under the plastic binder often used on these units. Smoke or other contaminants may collect under the plastic and are not easily visible unless a can is removed. It is recommended that exposed six-pack units be disassembled and wiped clean.

Use the following guidelines to determine if a product is **suitable** for reconditioning:

- The product is not contaminated.
- Soiled containers may be reconditioned if the soil can be removed and has not affected the closure mechanism or the contents.
- The closure mechanism is free of rust, and surface rust is removable by buffing.
- Indentations on the cap or crown are acceptable for reconditioning if the seal has not been damaged.
- All labels and tax stamps are in place.

Use the following guidelines to declare product **unsuitable** for reconditioning:

- The product is contaminated.
- There is evidence that the container has been exposed to extreme pressure or temperature.
- There is soil around the closure mechanism.
- Rust is present around the closure mechanism.
- The container or closure mechanism is defective.
- The cap or crown has dents which have affected the rim seal.
- The product was submerged in water or chemicals.

Hermetically Sealed Cans
Products in hermetically sealed cans that have been exposed to fire and smoke but not excessive heat, may be cleaned and relabeled. Hermetically sealed cans exposed to non-potable water may be reconditioned and relabeled under strict, controlled procedures. These procedures include removing all labels, inspecting the cans for pinholes, washing the containers in soapy solution, rinsing the containers in potable water, buffing the cans to remove rust (excluding heavily rusted cans), disinfecting the can by immersion in not less than 100 ppm chlorine solution, thorough drying, and relabeling.

Canned product can be considered **suitable** for reconditioning if:

- The product is not contaminated.
- Surface rust can be removed by buffing.
- Cans soiled by dirt, smoke, etc. can be cleaned by an acceptable method.
- Any insignificant paneling or denting has not affected the double seam or rim.
- Cracking has not compromised the cans corrugation.
- The ends of the can have not bulged.

Canned product should be considered **unsuitable** for reconditioning if:

- The product is contaminated.
- Rust has caused pitting of the can surface.
- The can is soiled and not easily cleanable.
- The can is leaking.
- The seams of the can are severely damaged.
- The can's appearance is abnormal, i.e. flippers, swellers, etc.
- The can has a defective closure mechanism.
- There is evidence of exposure to extremes temperatures.
- The can is dented, extensively creased, paneled, or the dent is on the seam or rim.

ALTERNATIVE USAGE

Certain food products that are unsalvageable for human or animal feed may have alternative uses, such as butter (for soap stock), meat and poultry products (for fertilizer), oils and nuts (for technical oil production), flour (for glue or wallboard construction), grains and fruit (for industrial alcohol), fish (for fertilizer), and eggs (for tannery use).

Food products intended for alternative uses must be denatured to render them unfit for food or animal feed. Continued control must be exercised until final disposition to prevent their reintroduction to the marketplace as food or feed. Firms are required to account for the amounts and types of product denatured, to whom the product was sold, and final use. It may be necessary to examine the product at its final destination to ensure that it is being used in non-food or non-feed product.

If you wish additional assistance, contact the Massachusetts Division of Food and Drugs, Food Protection Program at 617-983-6712.⁂

There are an increasing number of private citizens preparing food products in their home kitchens for sale. Massachusetts allows its residents to operate home-based businesses to produce low-risk foods, such as cakes, cookies, breads, and confectioneries. Currently, the Massachusetts Department of Public Health Division of Food and Drugs receives more than 200 inquiries per year from citizens interested in starting home-based food businesses.

Home-based food businesses are allowed within specific regulatory limitations.

Retail residential kitchen operations are restricted to sales directly to the consumer, and are inspected and licensed by the local board of health.

Wholesale operations may sell their products to retail stores, restaurants, etc., and are inspected and licensed by the Massachusetts Division of Food and Drugs.

At the end of this brochure there is a list of regulations pertaining to retail and wholesale residential kitchens, as well as information about obtaining copies.

The following are answers to some of the most commonly asked questions about residential kitchen operations.

What kinds of foods may be prepared in a residential kitchen?

Residential kitchens are strictly limited to the preparation of non-potentially hazardous foods (non-PHFs), such as baked goods, confectioneries, jams and jellies. Non-PHFs, such as cakes and cookies, which have PHF ingredients are acceptable.

What kinds of foods ***may not be prepared*** in a residential kitchen?

The preparation and sale of potentially hazardous foods (PHF) such as cream-filled pastries, cheese cake, custard and other foods which can support the growth of disease-causing bacteria are strictly prohibited.

In addition, perishable foods that require refrigeration, such as cut fruit and vegetables, tomato and barbeque sauce, pickled products, relishes and salad dressings are not permitted in residential kitchens.

Also, all foods that are manufactured or packaged using processes that require state or federal control (e.g. acidification, hot fill, vacuum-packaging, etc) are prohibited.

Garlic-in-oil products are not permitted.

What types of processing operations are prohibited in a residential kitchen?

Processing operations that are prohibited include: acidification, hot fill, thermal processing in hermetically-sealed containers, vacuum packaging, and curing/smoking. The only exception is jams and jellies that are thermal-processed in hermetically-sealed containers.

To evaluate the non-potentially hazardous status of a food, what type of laboratory analysis may a board of health or the Massachusetts Department of Public Health request?

The board of health or the Massachusetts Department of Public Health may require laboratory documentation that the food has a final pH of 4.6 or below or a water activity of 0.85 or below.

When reporting results, the laboratory must reference the standardized testing procedure.

Residential kitchen operators must keep records of analysis of products on file for review.

Persons preparing food products must maintain a standardized recipe of the products used in the preparation of the food: listing all ingredients in order of weight. Any change in the recipe constitutes a recipe deviation, and a new analysis may be required.

Are there labeling requirements for foods manufactured in a residential kitchen?

Yes. All foods prepared in a residential kitchen must be labeled with all ingredients (in order of amount by volume), name of residential kitchen, address and/or phone number, and sell-by date, if required.

Are there any personnel, marketing or volume restrictions for residential kitchens?

Yes. First, only household members may be employed in the operation.

Second, the use of brokers, wholesalers, and warehouses by residential kitchen operators to store, sell, and distribute foods prepared in residential kitchens is prohibited.

Food products manufactured in Massachusetts residential kitchens may not be sold out-of-state (in interstate commerce), because the U.S. Food and Drug Administration does not recognize these foods as originating from an approved source.

If you have questions about **retail** residential kitchen operations, inspections, or licensing, contact your local board of health.

If you have questions about **wholesale** residential kitchen operations, or licensing, contact the:
Massachusetts Department of Public Health
Division of Food and Drugs
Food Protection Program
305 South Street
Jamaica Plain, MA 02130
617-983-6712

Massachusetts
Residential Kitchen Regulations

Retail Sale:

105 CMR 590.000 *Minimum Sanitation Standards for Food Establishments, Chapter X*
Available at:
www.state.ma.us/dph/fpp/fc00.pdf
105 CMR 520.000 *Massachusetts Labeling Regulations*

Wholesale:

105 CMR 500.000 *Good Manufacturing Practices*
105 CMR 520.000 *Massachusetts Labeling Regulations*

A residential kitchen that wholesales its product is required to obtain a *License for Food Processing and/or Distribution at Wholesale* from the Massachusetts
Department of Public Health

An application for a License to Manufacture and/or Distribute Food at Wholesale from a Residential Kitchen is available at www.state.ma.us/dph/fpp/wfoapp.pdf.

A Notice for Applicants is available at www.state.ma.us/dph/fpp/wfoapp.pdf.

To obtain copies of the regulations, contact a State Bookstore:
Bookstore, Room 116
Massachusetts State House
Beacon Street
Boston, MA 02133
or telephone:
Boston: 617-727-2834
Springfield: 413-784-1376
Fall River: 508-646-1374

Residential Kitchens

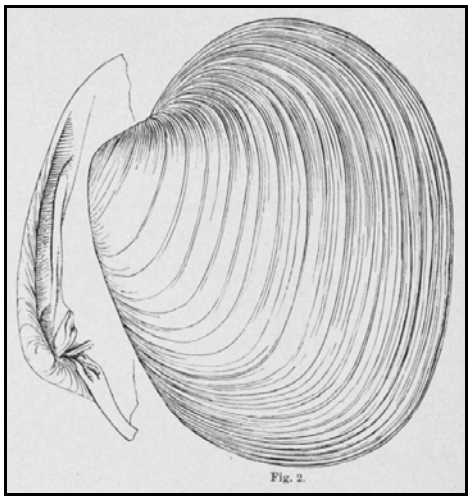
Questions and Answers

Massachusetts
Department of Public Health

Division of Food and Drugs
Food Protection Program

617-983-6712
305 South Street
Jamaica Plain, MA 02130

Massachusetts Shellfish Harvesting and Distribution



Massachusetts Department of Public Health
Division of Food and Drugs
305 South Street
Jamaica Plain, MA 02130

In January 2001 the Food Protection Program produced brochure, **Massachusetts Shellfish Harvesting and Distribution.**

This document can be downloaded from the Web.

The brochure format must be printed on 8.5 inch x 14 inch paper (egal size) paper. www.state.ma.us/dph/fpp/4folds~1.pdf

A text format which can be printed on standard 8.5 inch by 11 inch paper is located at: www.state.ma.us/dph/fpp/webshell.pdf

A copy of the brochure text and illustrations are include on the next four pages.

Massachusetts Shellfish Harvesting and Distribution

This brochure contains information in response to questions frequently asked by the seafood industry.

A complete copy of the state and federal regulations may be obtained at the bookstores listed at the back of this brochure.

Shellfish Harvesters

- Shellfish Harvesters must be properly licensed by the Massachusetts Division of Marine Fisheries (DMF): 617-626-1520.
- Every container of shellfish must have a proper and completed harvester tag attached to it prior to landing.
- Proper harvest area designations must be used on harvester tags. (Bed certificate numbers are no longer valid and not allowed.) State-designated shellfish area numbers may be obtained from local Shellfish Departments or the Massachusetts DMF Pocasset Office: 508-563-1779.
- A shellfish harvester (including grant holder) may sell shellfish, using a transaction card, only to a properly-permitted Massachusetts Wholesale Dealer
- Shellfish must be transported in totally enclosed vehicles with tight-fitting doors and smooth, easily-cleanable floors, walls, and ceilings. Commercial size and grade coolers may be acceptable.
- Harvesters are exempt from the federal Seafood HACCP regulation (21 CFR 123).

Retail Stores

- Any market engaged in the retail sale of seafood, including shellfish, must hold a valid retail store permit issued by the Massachusetts Division of Marine Fisheries: 617-626-1520.
- A Retail Store must operate from a fixed location which has been approved by the Massachusetts Division of Food and Drugs.
- A Retail Store may purchase shellfish only from a licensed Wholesale Dealer or Wholesale Truck.
- Proper shellfish tags must be attached to each container of shellfish. The tag must remain attached until the container is empty. Thereafter, the tag must be kept on file for 90 days.
- Shucked shellfish may only be purchased from a properly-permitted Wholesale Dealer or Wholesale Truck.
- Every container of shucked shellfish must be labeled in accordance with NSSP requirements, including the date shucked and the certification number of the processor.
- A Retail Store may not shuck shellfish.
- A Retail Store may not Wet Store shellfish.
- Retail Stores are exempt from the federal Seafood HACCP regulation (21 CFR 123).

Wholesale Trucks

• Any person purchasing, selling or distributing shellfish for wholesale purposes from a truck must hold a valid Wholesale Truck permit issued by the Massachusetts Division of Marine Fisheries: 617-626-1520.
• A Wholesale Truck permit is not required if the firm holds a valid Massachusetts Wholesale Dealer permit.
• All Wholesale Trucks must be inspected and approved by the Massachusetts Division of Food and Drugs.
• All Wholesale Trucks must be equipped with a combination of insulation and mechanical refrigeration capable of maintaining the storage compartment of the truck at 45°F or less. The storage compartment must have smooth, easily cleanable floors, walls, and ceilings and tight-fitting doors.
• Shellfish may be purchased only from Wholesale Dealers.
• Wholesale Truck operations may not purchase shellfish directly from a Harvester.
• A bound ledger (with numbered pages) must be maintained documenting the purchase and sale of all shellfish.
• Wholesale Truck operations may not re-tag or process shellfish.
• All Wholesale Trucks must bear the name of the dealer, permit number, and the words "Shellfish Dealer." Lettering must be at least 4 inches in height, and displayed on both sides of the vehicle.

Wholesale Dealers

• Any person purchasing, selling, or distributing seafood, including shellfish, for wholesale purposes must hold a valid Wholesale Dealer permit issued by the Massachusetts Division of Marine Fisheries: 617-626-1520.
• A Wholesale Dealer must have a fixed location approved by the Massachusetts Division of Food and Drugs (DFD).
• Wholesale Dealers who transport shellfish must also comply with all Wholesale Truck regulations.
• A Dealer may purchase shellfish directly from a licensed Harvester, Wholesale Truck, or another Wholesale Dealer.
• Every container of shellfish in a Dealer's facility must have attached to it a proper and complete shellfish tag.
• The Dealer must keep a bound ledger (with numbered pages) documenting the purchase and sale of all shellfish.
Computer records may be acceptable, if approved by the Massachusetts DFD.
• When purchasing shellfish from a Harvester, the Dealer must mechanically imprint the harvester's transaction card onto a serialized transaction slip.
• When re-tagging shellfish, the Dealer must correctly transfer all of the information from the original tag.
• Wet Storage may be conducted only with written approval from the Massachusetts DFD.
• A HACCP plan and maintenance of Sanitation Records are required by the federal Seafood HACCP regulation (21 CFR 123).

Interstate Shellfish Dealers

- In order to ship shellfish across state lines, a firm must be listed on the Interstate Certified Shellfish Shipper's List (ICSSL).
- To be added to the ICSSL, contact the Massachusetts Division of Food and Drugs (617-983-6712) and request an ICSSL inspection.

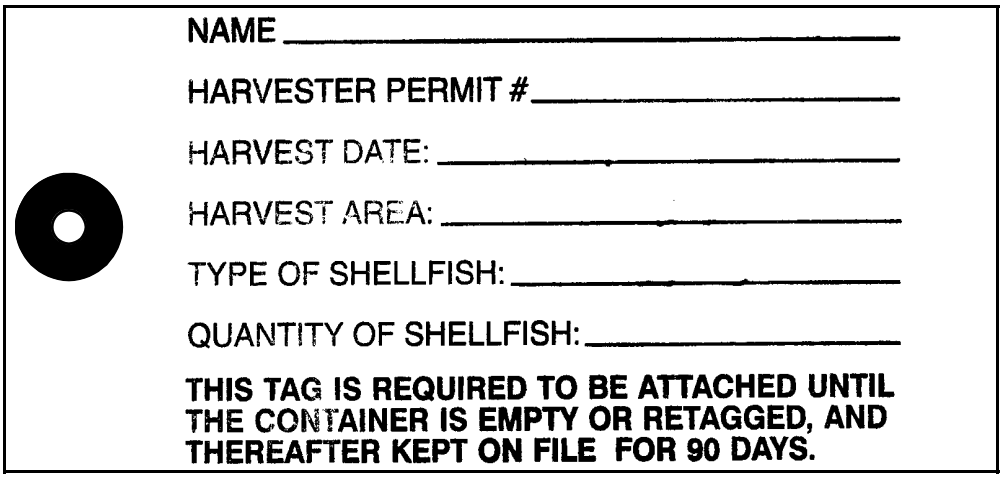
Additional information is available at: www.issc.org

To obtain copies of Massachusetts regulations (105 CMR 533 *Fish and Fish Products* and 105 CMR
500 *Good Manufacturing Practices for Food*), contact a State Bookstore:
Massachusetts State House
Room 116
Beacon Street
Boston, MA, 02133
or telephone:
Boston: 617-727-2834
Fall River: 508-646-1374
Springfield: 413-784-1376

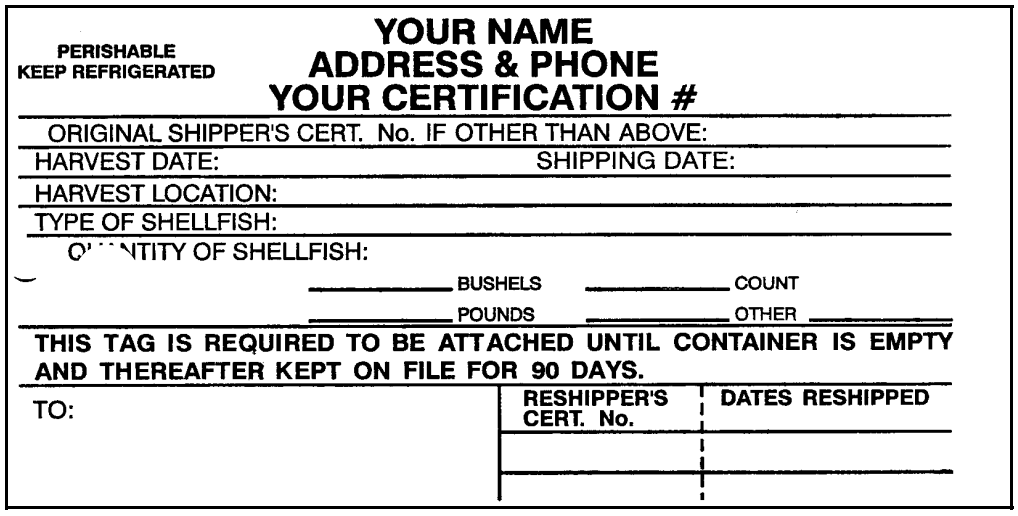
To obtain copies of federal regulations
(21 CFR 110 *Current Good Manufacturing Practices* and
21 CFR 123 *The Seafood HACCP Regulation*), contact:
Government Printing Office Bookstore
Tip O'Neill Federal Building
10 Causeway Street
Boston, MA 02222
Telephone: 617-720-4180

Shellfish Tags must be durable, water-proof, at least 2 5/8" X 5 1/4" in size, and in the following format:

Harvester Tag



Dealer Tag



Dealer tags must include the following statement (may be printed on back of tag) :
"Retailers inform your customers: Thoroughly cooking foods of animal origin such as shellfish reduces the risk of foodborne illness. Individuals with certain health conditions such as liver disease, chronic alcohol abuse, diabetes, cancer, stomach, blood or immune disorders may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information."

1999 Local Boards of Health Reporting Requirement Summary

Each year local boards of health are required to report food protection statistics to the Department of Public Health, Division of Food and Drugs, Food Protection Program (FPP) in accordance with 105 CMR 590.010 (F). In May 2000 the FPP sent surveys to all boards of health requesting 1999 data. The Division received completed surveys from 55% of the local boards of health. The information obtained from the surveys will be used to: 1) provide the FPP an with an overview of local board of health food sanitation programs; 2) guide the FPP in determining which communities are more likely to benefit from assistance to strengthen their programs; and 3) evaluate the need for training.

Board of Health Staffing
In 1999, 30% of the reporting boards of health had at least one full-time-equivalent (FTE) inspector dedicated to food protection. Seven percent of boards of health had no food inspectors on staff. Of the reporting boards of health 12.9% had an increase in staff assigned to food protection activity, 6.9% had a decrease, and 80.2% stayed the same.

The 1999 survey results indicate that many boards of health inspectors possess professional credentials. Eighty-seven percent of responding boards of health employ at least one Certified Health Officer, Registered Sanitarian, or Certified Food Protection Manager. Only 10% of local boards of health employ inspectors without any of the above-mentioned credentials.

Establishments
A total of 27,672 licensed food establishments were reported for 1999. This number includes: foodservice establishments, residential kitchens, mobile food operations, and temporary events.

Food Establishment	Number
Foodservice Establishment	22028
Residential Kitchens	687
Mobile Food Units	1232
Temporary	3725
Total	27672

Inspection activities
Forty percent of responding boards of health were able to conduct the required 2 inspections per year for each food establishment. This figure has increased by 10% since 1997.

Complaints
The responding boards of health reported 4694 general complaints and 886 foodborne illness complaints. These numbers are similar to what has been reported in prior years.

Fifty-eight percent of the responding boards of health have access to the internet. Internet access has become increasingly useful in obtaining food safety information from the DPH, FDA, USDA and other websites.

Training Program Requests
There were over 55 requests for training programs from local boards of health. A variety of topics and suggestions for future training programs were submitted. Topics included, Food Code training, HACCP principles, sushi, field inspections, and more. The Division is considering these requests and will incorporate them into future training programs.

2000 Survey
Each year the Division will continue to collect information from local boards of health regarding their food protection programs. The 2000 survey will be mailed in May 2001 with a requested return date of June 2001.⁂

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH

DIVISION OF FOOD AND DRUGS
1999 LOCAL BOARD OF HEALTH REPORTING REQUIREMENTS

Board of Health		Chairperson	
Address Line I		Director	
Address Line II		Telephone #	( )
City/Town		Fax #	( )
Zip Code		Emerg.Tel.#	( )
Population		E-mail Add.	
Prepared By		Date	_____/_____/_____

1) a. Number of food inspectors/sanitarians:_____FTE. (See attached instructions.)
b. In 1999, did FTE's in food protection _____increase, _____decrease, or _____stay the same?

2) a. Number of food inspectors who have passed a certified food protection manager or certified food safety professional exam: _____
b. Number of food inspectors who are registered sanitarians or certified health officers: _____
c. Number of inspectors who have received HACCP training: _____

3) Please list the number of licensed food establishments by category and the number of inspections actually conducted. If a food establishment has more than one operation, please use the primary category of operation.		
Type of Establishment	# of Establishments	# of Inspections
Food Service (e.g., restaurant, school, charitable food facility, caterer, nursing home) **AND** Retail Food Store (e.g., supermarket, convenience store)		
Residential Kitchen (e.g., bed and breakfast, retail sale)		
Mobile Food Unit and/or Pushcart		
Temporary Food Establishment		
Frozen Dessert Manufacturer		
TOTAL		

4) Does the Food Protection Program complete 2 inspections per year in each establishment?
____Y ____N

If no, what percentage of licensees are inspected twice per year?
___10% ___25% ___50% __>50%

Does the Board use a risk-assessment tool (such as high risk food preparation, high risk customer population or previous inspection history) to determine which establishments should be inspected first? If yes, please attach a copy of your risk assessment tool. **____Y ____N**

5) Please indicate the total number of the following actions that were taken over the past year.

a) Administrative Hearings _____	c) License Revocations _____
b) Suspensions of Operations_____	d) Emergency Closures _____

6) Please indicate the number of complaints received according to category.
a) General Complaints **#_____**
b) Food-Borne Illness (FBI) Complaints **#_____**

7) Does the Board of Health have a current ordinance or regulation pertaining to Food Management training and/or testing? **_____Y _____N** If yes please attach a copy.

8) Please attach a list of firms that prepare or store food for wholesale distribution.

9) Does the Board of Health have internet access? **_____Y _____N**

10) Please attach a list of training programs in food protection which you would like to see offered by the Division of Food and Drugs.

Thank you for completing this questionnaire. Please mail the completed form **by June 1, 2000** to Beth Altman, MA Division of Food and Drugs, 305 South Street, Jamaica Plain, MA 02130.

Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Food and Drugs
Division of Community Sanitation
305 South Street
Jamaica Plain, MA 02130

Telephone:
Division of Food and Drugs: 617-983-6712
Division of Community Sanitation: 617-983-6761
FAX: 617-983-6770

Jane Swift
Governor

William D. O'Leary
Secretary of Health and Human Services

Dr. Howard K. Koh, M.D., M.P.H.
Commissioner of Public Health

Nancy Ridley
Assistant Commissioner, Bureau of Health Quality Management
Director, Division of Food and Drugs

Paul J. Tierney
Director, Food Protection Program
Division of Food and Drugs

Howard S. Wensley
Director, Division of Community Sanitation